



AMNESTY INTERNATIONAL RECOMMENDATIONS TO THE DUTCH EU PRESIDENCY

January – June 2016

Amnesty International recommendations to the Dutch Presidency of the Council of the EU

As the Dutch government prepares to assume the Presidency of the Council of the European Union (EU), Amnesty International calls on the Presidency to take this opportunity to put human rights issues at the forefront of its mandate. We therefore call on the Dutch government to act upon the following recommendations throughout its Presidency.

The Dutch EU Presidency should:

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| 1 | Migration: |
| | Promote safe and legal routes to protection in Europe. |
| | Ensure EU cooperation on migration with non-EU countries is human rights compliant. |
| 2 | Anti-discrimination: |
| | Strengthen EU anti-discrimination law and promote hate crime protections for all. |
| | Review member state efforts to integrate Roma. |
| 3 | Human rights in the EU: |
| | Strengthen the work of the Council to protect human rights in the EU. |
| 4 | Human rights defenders: |
| | Review EU support to human rights defenders around the world. |
| 5 | Conflict minerals: |
| | Ensure EU conflict minerals legislation includes effective human rights protections. |
| 6 | Stop torture: |
| | Secure stronger and more effective EU controls on trade of 'Tools of Torture'. |

Migration

1. Promoting safe and legal routes to protection in Europe

EU member states have done little so far to share international responsibility for the nearly 60 million people displaced as a result of conflict and crisis around the globe. EU leaders have also chosen to ignore the fact that the displacement of people due to conflict and persecution in their home countries and a frequent lack of effective protection in neighboring ones would inevitably push people towards Europe too and have continued to take measures to ostensibly prevent irregular migration. This has forced refugees to travel to Europe using increasingly clandestine means, thus putting them at risk of human rights violations and creating a lucrative business for smugglers. Over 3,500 people died at sea attempting to reach Europe in 2014 and nearly as many perished in 2015, despite the laudable increase of search and rescue operations at sea.

Since 2013, less than 68,000 resettlement places have been pledged for Syrian refugees by 18 of the EU's 28 member states – 38,500 of them by Germany alone.¹ Much bigger efforts must be made to provide a meaningful response to the global refugee crisis. In 2015, the JHA Council reached agreement to resettle 20,000 refugees, a commitment falling direly short of resettlement needs and continuing to push people into using unsafe routes and into the hand of smugglers and traffickers. Member states and the Commission have agreed to develop further resettlement opportunities, and a legislative proposal for a structured EU-wide resettlement scheme is to be tabled soon. This should provide better joined-up EU responses and scaled-up resettlement opportunities in the EU. Other ways of sharing responsibility should also be identified, such as the greater use of humanitarian visas and the lifting of visa restrictions.

| What the NL Presidency should and can do | Signs of success |
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| The Dutch Presidency should facilitate discussion and agreement on opening more opportunities for safe and legal routes for refugees to come to Europe. | <ul style="list-style-type: none">• Proactive organisation of a High Level event or other platform on the global refugee crisis and focused on international responsibility and burden sharing.• Council agreement on a mandatory EU-wide resettlement scheme or national programmes in place. |

¹ Numbers include other forms of admission such as humanitarian admission or private sponsorship programmes. UNHCR, Resettlement and other forms of admission for Syrian refugees, 2 October 2015, available at: <http://www.unhcr.org/52b2febafc5.html>.

2. Ensure EU cooperation on migration with non-EU countries is human rights compliant

Cooperation with third countries on migration has long been high on the EU agenda. Faced with the challenge of an increasing migration influx, the EU has actively sought to enlist neighboring countries as gatekeepers. In 2014, the EU-Horn of Africa Migration Route Initiative ('Khartoum Process') was launched with the official aim of tackling trafficking and smuggling of migrants. In 2015, a joint action plan with Turkey was negotiated with the ostensible aim of stemming the flow of migrants to Europe and a High-level Conference on the Eastern Mediterranean/Western Balkans Route also put emphasis on border control measures. Another EU Summit with African Heads of State and government took place in Valletta in November 2015, and focused on return and readmission, dismantling criminal networks and preventing irregular migration.

Moreover, EU leaders have been calling insistently for the development of safe and sustainable reception capacities in affected regions in third countries for asylum processing and return of refugees from Europe on safe third country grounds. The European Commission announced in May 2015 that the border management component of ongoing Common Security and Defense Policy missions already deployed in countries like Niger and Mali, will be strengthened and a pilot multi-purpose centre will be set up in Niger by the end of the year, where – among other “services”- voluntary return options will be offered for irregular migrants. Any such initiatives without adequate risk assessment and human rights safeguards could trap refugees and migrants in countries where they face serious human rights violations or even encourage human rights violations such as arbitrary detention, *refoulement* as a result of ineffective asylum systems, and excessive or unnecessary use of force during border management operations. The human rights impact of third country projects and cooperation arrangements should be addressed and decision-makers should be accountable by ensuring more transparency around these initiatives and independent monitoring of their implementation on the ground.

| What the NL Presidency should and can do | Signs of success |
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| Initiate evaluation of cooperation between EU and third countries, to assess protection of refugee rights, define human rights benchmarks, and increase operational accountability. | <ul style="list-style-type: none">• Call for evaluation and review is made and mandate is given to the European Commission to define human rights benchmarks for new arrangements and projects, and ensure implementation of recommendations made in its 2011 evaluation of readmission agreements,• Cooperation projects with third countries are devised, adopted, and implemented in a transparent manner and include monitoring mechanisms which allow for public scrutiny, such as the participation of international and non-governmental organisations in “Joint Readmission Committees” to monitor the implementation of EU readmission agreements. |

Anti-discrimination

1. Strengthen EU anti-discrimination law and promote hate crime protections for all

Discrimination and violence, particularly targeting ethnic and religious minorities including Roma, migrants, refugees and asylum seekers, and lesbian, gay, bisexual, transgender and intersex (LGBTI) people, remain a Europe-wide concern. The Council should prompt bold action to combat persistent discrimination and hate crime across the EU.

When starting its mandate in November 2014, the European Commission announced that one of its priorities in the area of fundamental rights would be the adoption of its proposal – originally put forward in July 2008 – for a new horizontal anti-discrimination directive. Yet one year later, the Council of the EU has still failed to adopt this piece of legislation that would enhance protection against discrimination on the grounds of age, disability, sexual orientation and religion in all walks of life. The Dutch Presidency should take a lead in securing adoption of the directive during its term.

With regard to the protection against hate crimes in Europe, the adoption of the Framework Decision on Racism and Xenophobia (2008/913/JHA) represented a great step forward by the EU. However, as this instrument only covers racism and xenophobia it does not prohibit hate crimes on the basis of different grounds of discrimination. This leaves a clear gap in protection that needs to be addressed. Furthermore, problems remain with the effective implementation of the instrument, in particular with regard to the actual investigation and recording of such crimes. Full implementation by all Member States should be ensured by providing further guidance.

| What the NL Presidency should and can do | Possible achievement and signs of success |
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| Further to last October's EU Colloquium on Fundamental Rights, the Dutch Presidency should lead EU action to ensure better protection from hate crime for all and strengthen EU non-discrimination rules by securing adoption of the horizontal anti-discrimination directive. | <ul style="list-style-type: none">• In the context of their planned event on hate crime, the Dutch Presidency should in particular;<ul style="list-style-type: none">1) promote effective implementation of existing EU standards on hate crime (Framework Decision on Racism and Xenophobia), including taking into consideration racist motivation behind all crimes and ensuring that racist motivation is adequately investigated and recorded2) highlight the existing gap in the EU legislative framework, as there is lack of EU standards on hate crimes perpetrated on the grounds of other characteristics, such as sexual orientation, gender identity or disability.• The Dutch Presidency affirms that the adoption of the horizontal anti-discrimination directive (ADD) is a priority and organises at least two Working Party meetings at the |

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2. Review member state efforts to integrate Roma

In December 2015, it will be two years since the Council of the EU issued its recommendation on effective Roma integration measures in the member states. The Dutch presidency should show leadership in the fight against discrimination against Roma by initiating a review of the recommendation's implementation. The Dutch presidency should, encourage a debate with stakeholders on how to address the challenges of implementation. A particular focus should lie on the need to combat discrimination against Roma through better implementation of the EU Race Equality Directive.

| What the NL Presidency should and can do | Possible achievement and signs of success |
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| The Dutch presidency should initiate a review of the implementation of the 2013 Council recommendation on effective Roma integration measures in member states. | <ul style="list-style-type: none"> A council working group meeting reflects on the implementation of the 2013 Council recommendations in particular focusing on the effectiveness, good practices and lessons learned from National Roma Integration Strategies and their implementation. The Dutch Presidency issues a statement on the outcomes of this reflection. The outcomes are transmitted to national Roma contact points, in particular, in order to support assessment of national integration strategies. |

Human rights in the EU

1. Strengthen the work of the Council to protect human rights in the EU

Human rights are universal, inalienable and indivisible. As outlined by Article 2 of the Treaty on the Functioning of the EU, the EU is founded on respect for human rights. In addition, Article 3 of the Treaty of the European Union states that 'the Union's aim is to promote peace, its values and the well being of its peoples'. The Union's aim, its *raison d'être* is to promote 'respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities'. As such, any debate on safeguarding the rule of law cannot ignore the broader point of safeguarding human rights without failing in its objective. However, latest developments in the Council risk a narrow focus only on the rule of law, without adequate consideration of human rights concerns within the EU. The Council in its conclusions of June 2014 notes with interest the idea of an annual assessment by the Council, on the basis of the Commission's annual report on the application of the Charter of Fundamental Rights, of Union action

regarding the provisions of the Charter and of pointing out areas for future action. The Council further indicates this could gradually lead to an internal human rights strategy of the Union.

The notion of human rights, however, has been sidelined in the initiative of the ‘rule of law dialogue’ as established by the General Affairs Council conclusions of 16 December 2014.² We call upon the Dutch Presidency to ensure the Council brings back the idea of an assessment of the situation regarding human rights in the Union. Such an assessment should not only take into account the Commission’s annual report on Charter implementation, but all annual and specific reports by the European Commission, the European Parliament, civil society, the Council of Europe and its Venice Commission, the Fundamental Rights Agency and various existing UN documents, such as the Universal Periodic Review (UPR). In addition to annual reviews, the Council should not refrain from responding to situations where international and European human rights bodies identify a particular crisis or structural problem in one or several member states.

| What the NL Presidency should and can do | Possible achievement and signs of success |
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| <p>The Dutch Presidency should propose that the Council engages in a regular, systematic assessment of internal EU human rights issues. This assessment should take into account annual and specific reports by the European Commission, the European Parliament, civil society, the Council of Europe and its Venice Commission, the Fundamental Rights Agency and various existing UN documents, such as the Universal Periodic Review (UPR)</p> | <ul style="list-style-type: none"> • The Dutch Presidency places the specific role of the Council in the protection of human rights and rule of law within the EU on the agenda of the Justice and Home Affairs Council and the planned events on implementation of the Charter on Fundamental Rights and the rule of law. • The Dutch Presidency proposes that the Council engages in an annual assessment of the human rights situation in the EU. • The events organised by the Dutch Presidency include a recommendation to establish such an assessment. • The Justice and Home Affairs Council adopts conclusions that strengthen the work of the Council with regard to protecting human rights and rule of law in the EU, ensuring a direct response to serious violations by member states, including by activation of available mechanisms such as under Article 7 of the Treaty on European Union. |

² http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/146348.pdf

Human rights defenders

1. Review EU support to human rights defenders

Worldwide, human rights defenders (HRDs) continue to face harassment, threats, violence and restrictive legislation that hinder them from carrying out their vital work. The EU and its member states have a crucial role to play in providing protection, support and visibility for HRDs, through practical and material support as well as political engagement up to the highest levels – including both diplomatic efforts and public positioning.

The recent adoption of a revised EU Action Plan on Human Rights and Democracy for 2015-2019³ marked the most recent step in reinforcing EU and member states' support for the work of HRDs, alongside existing EU and member state commitments and instruments on HRDs.⁴ Despite much progress, the EU and its member states are still challenged to deliver fully on these commitments and to adopt a more coherent and strategic approach when speaking out on behalf of, and acting for and with, human rights defenders. The Dutch Presidency will oversee the development of concrete actions on HRDs under the new Action Plan, and will have important opportunities to make EU commitments on HRDs a reality in practice.

With the long-standing and well-known commitments of the Netherlands toward HRDs, the Dutch EU presidency represents a key opportunity to boost EU and member state work on HRDs and to adopt a more ambitious approach to better protect, reach out to and provide concrete, measurable support to HRDs.

| What the NL Presidency should and can do | Possible achievement and signs of success |
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| The Dutch Presidency should initiate the establishment of a regular, comprehensive stock-taking of the effectiveness of EU responses to support and protect human rights defenders across diverse policy areas (This should include EU+ local strategies as exist in Afghanistan, Russia and elsewhere, as well as emergency response strategies for HRDs in crisis situations e.g. Afghanistan and Burundi) | <ul style="list-style-type: none">• The Dutch Permanent Representation to the EU organises a stock-taking event with EU institutions to determine opportunities to mainstream HRD work across policy areas; the effectiveness of country-specific local strategies; and the potential to reinforce support to HRDs in crisis situations, including e.g. progress of the EU+ local strategy for HRDs in Afghanistan, following its one-year anniversary in December 2015.• Concrete steps are taken toward the development of a strategic approach to public statements on HRDs at the EU level.• Agreement is secured on a regular review by FAC on HRDs, including of the effectiveness |

³ <http://data.consilium.europa.eu/doc/document/ST-10897-2015-INIT/en/pdf>

⁴ http://eu-un.europa.eu/articles/en/article_15216_en.htm
http://eeas.europa.eu/human_rights/guidelines/defenders/docs/16332-re02_08_en.pdf

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| | <p>of emergency response tools for HRDs.</p> <ul style="list-style-type: none"> • Lead the Council to ensure the regular invitation of HRDs to the FAC, COHOM and geographical working groups. • The Dutch Presidency explicitly links its work on UN Resolution 1325 to EU initiatives on women in Afghanistan and to the particular needs for support and protection of women HRDs in Afghanistan (i.e. both HRDs who are women and HRDs who work on women's rights). |
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Conflict minerals

1. Ensure EU conflict minerals legislation includes effective human rights protections

The Council is currently debating the Commission's proposal⁵ on responsible sourcing of the so-called conflict minerals tin, tungsten, tantalum and gold (3TG). The Commission initiated the legislative procedure with a proposal for a voluntary supply chain due diligence regime for importers of raw materials and metals. In reaction, the European Parliament requested mandatory obligations including for those operators further downstream in the supply chain who place the covered materials and products containing them for the first time onto the EU market.⁶

The Council should follow the example of the European Parliament and opt for a robust due diligence system which legally requires companies to source responsibly, consistent with the OECD Due Diligence Guidance. In June 2014, the Foreign Affairs Council reaffirmed its support for the implementation of the OECD Guidance. The voluntary OECD Guidance has been available to companies since 2010, yet survey data reveals that few European companies have put in place the due diligence processes it recommends.⁷

This regime should apply to downstream operators. A scheme that is closed to downstream companies would be seriously limited as it would not affect those products placed onto the EU market which are manufactured outside of the EU. This would not only represent a missed opportunity to use the EU's commercial leverage over global suppliers to further create transparent and responsible supply chains, it would also fall well short of the OECD standard, as well as legislation and initiatives developed in the US, China, and the African Great Lakes region. The Dutch presidency will be leading the Council's negotiations with the European Parliament in the forthcoming informal triologue. It should lead the Council to ensure human rights protection is effectively reflected in newly-established measures.

⁵ Proposal for a regulation of the European Parliament and of the Council setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas, http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152227.pdf.

⁶ <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2015-0204>.

⁷ European Commission, Impact Assessment, http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152229.pdf, p.13, p.19, p.23, and p.36, SOMO, "Conflict due diligence by European companies", November 2013, <http://somo.nl/news-en/sourcing-of-minerals-could-link-eu-companies-to-violent-conflict>.

| What the NL Presidency should and can do | Possible achievement and signs of success |
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| In the legislative process on setting up a Union system for supply chain due diligence for the trade in so-called conflict minerals, lead the Council to ensure human rights protection is effectively reflected in newly-established measures. Facilitate agreement on a robust due diligence system which legally requires companies to source responsibly, consistent with the OECD Due Diligence Guidance. | <ul style="list-style-type: none"> Closure of the legislative process with legislation that entails mandatory supply chain due diligence obligations for operators placing raw materials, metals and products, semi-products and components containing 3 TG for the first time onto the EU market. |

Stop Torture

1. Secure stronger and more effective EU controls on trade of ‘Tools of Torture’

Since 2006, the EU has had the world’s only regional mechanism to prohibit or control the trade of equipment which could be used in torture or capital punishment. This includes for example pharmaceuticals used in lethal injections, thumb screws, and spiked batons. Whilst strongly supporting the Regulation, Amnesty International has been at the forefront of highlighting the serious loopholes and limitations in the instrument and its patchy implementation by EU states. Such failings have permitted EU companies to support and profit from the torture trade. This continues despite the fact that the prohibition of torture under international law is absolute and that the death penalty is absolutely prohibited in the EU. Furthermore both the EU and member states have committed themselves to combating such practices across the world.

Further to Commission proposals to amend the Regulation, the European Parliament voted in October 2015 to strengthen significantly those proposals and address a number of crucial weakness and loopholes in the Regulation and its attendant control regime. The changes would include prohibiting EU companies from advertising banned equipment at trade fairs and online, and introducing a targeted ‘end-use’ mechanism, allowing member states to halt immediately a transfer of equipment if they know that this equipment is clearly going to be used for torture or the death penalty, whether listed in the Regulation’s annexes or not.

The European Parliament has duly sought to challenge the inconsistencies within the EU’s approach to stamping out torture. It is essential that member states in the Council, led by the Dutch Presidency, now endorse equally robust measures to strengthen the European Commission’s proposal, and put an end to companies based in the EU continuing to market, trade in, and profit from a range of security equipment used to torture and execute people.

| What the NL Presidency should and can do | Possible achievement and signs of success |
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| The Dutch Presidency should lead the Council to | The Council and European Parliament adopt |

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| <p>agree robust measures to close existing loopholes in the 'Tools of Torture' Regulation and strengthen its attendant control regime, in line with the demands of the European Parliament.</p> | <p>amendments to Regulation (EC) 1236/2005, including amendments</p> <ul style="list-style-type: none"> • prohibiting the promotion and advertising of banned torture equipment; • ensuring 'brokering', 'transit' and 'technical assistance' are effectively covered by the Regulation; and • introducing a targeted 'end-use' mechanism allowing EU states to immediately suspend a specific transfer of goods destined for use in torture or the death penalty, even if such goods are not currently listed in the Regulation's annexes. |
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